THE WORK OF THE MICHIGAN SUPREME COURT DURING THE SURVEY PERIOD: A STATISTICAL ANALYSIS

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THIS quantitative analysis of the decisions of the Michigan Supreme Court includes the cases beginning with *Bickell v. Flint Civil Service Comm'n*,[1] decided June 3, 1963, and ending with *Osgerby v. Tuscola Circuit Judge*,[2] decided June 1, 1964. In form it is somewhat similar to that published each year by the Harvard Law Review with respect to the work of the United States Supreme Court,[3] subject, of course, to the differences between the procedures of the two courts.

Lest some readers should seek qualitative conclusions from the data presented here, a caveat is offered: No firm conclusions about the quality of any justice's work—the amount of time spent, the depth of research, the philosophical or jurisprudential bases for agreement or disagreement with other justices, the influence of his politics, his devotion to his work, his judicial temperament or his ability—can be derived from a study which is and purports to be nothing more than a numerical tabulation. At best these statistics are suggestive; at worst they may be deceiving. Anyone wishing to develop meaningful conclusions about the qualitative aspects of a justice's work, therefore, is enjoined to read the decisions carefully and to consider also the other burdensome but necessary tasks, such as creating and amending court rules, which the justices are often called upon to perform.

Disposition of Reported Cases

Table I reveals that the ratio of affirmances to reversals of appellate docket cases was exactly two to one during the Survey period (138 to 69). Of a total of 216 cases on the appellate docket 138, or 64 per cent, were affirmed, and 69, or 32 per cent, were reversed. On the original docket, however, the ratio of writs granted to writs denied was three to two (6 to 4). If the granting of an original writ is equated with a reversal, and the denial with an affirmance, the percentage of affirmances drops slightly (to 62 per cent) and the percentage of reversals increases slightly (to 34 per cent).

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1. 370 Mich. 316, 121 N.W.2d 852 (1963).
2. 373 Mich. 237, 128 N.W.2d 351 (1964).
3. See The Supreme Court, 1963 Term, 78 Harv. L. Rev. 179 (1964).

TABLE I
DISPOSITION OF REPORTED CASES

	Total	Affirmed	Reversed	Aff'd in part Rev'd in part	Modified	Remanded	Appeal dismissed	Writ granted	Writ denied	Other
Original Docket (No per curiams)	12[1]							6	4[1]	2[2]
Appellate Docket										
Full Opinion	202[1]	128[3]	66[4]	5[5]	1	1	1			
Per Curiam	14	10	3		1					
Other										
Per Curiam	1[6]									1[6]
Totals	229	138	69	5	2	1	1	6	4	3

[1] Wilson v. Saginaw Circuit Judge, 370 Mich. 404, 122 N.W.2d 57 (1963) is an original mandamus action and an appeal in the nature of mandamus. For the purposes of this table it is included only under "Appellate Docket," and does not appear in the total of "Original Docket" cases. The writ was denied.

[2] For the purposes of this table In re Apportionment of State Legislature, 372 Mich. 418-482, 126 N.W.2d 731, 127 N.W.2d 862, 128 N.W.2d 350 (1964) is treated as two cases.

[3] In Petoskey Chamber of Commerce v. City of Petoskey, 372 Mich. 483, 127 N.W.2d 363 (1964) the court refused to affirm or disaffirm part of the decree "for want of clarity of facts." In McCarty v. Mercury Metal Co., 372 Mich. 567, 127 N.W.2d 340 (1964) the judgment was affirmed but the case was remanded for a determination as to whether defendant sustained its burden of proof, pursuant to GCR 1963, 810.

[4] Where the practical effect of a remand or modification was to reverse the decision of the court below, the case is treated here as a reversal. See, e.g., Callihan v. Talkowski, 372 Mich. 1, 124 N.W.2d 788 (1963) and Cooke v. Taube, 372 Mich. 132, 125 N.W.2d 278 (1963). The headnote in the advance sheet reporting People v. Lyall, 372 Mich. 607, 127 N.W.2d 345 (1964), which indicates that the case was affirmed, is incorrect.

[5] In Winchester v. Meads, 372 Mich. 593, 127 N.W.2d 337 (1964) the court reversed and remanded for a new trial limited to damages only.

[6] In re Districting for Court of Appeals, 372 Mich. 227, 125 N.W.2d 719 (1964) is a letter from the Justices to the Governor, Lieutenant Governor and the Legislature of Michigan.

Once the new court of appeals begins to function it can be expected that a higher percentage of reversals will occur. This will result from the fact that the supreme court will then hear appeals only on leave granted and will undoubtedly weed out those cases in which the appeal is on its face without merit but which might have been appealed of right during the Survey period.[4]

DISPOSITION OF CRIMINAL CASES AND NEGLIGENCE CASES

Cases classified as criminal cases and negligence cases under Table II accounted for 34 per cent of all the cases decided by the court during the Survey period. Of 19 decisions in the "criminal" category 10, or 53 per cent, favored the government, and 9, or 47 per cent, favored the defendant (or prisoner). Of 54 negligence cases (excluding the "other" category) the claimant prevailed in 31 (57 per cent) and the defendant in 23 (43 per cent).

It is interesting to note that while affirmances in all cases generally outnumbered reversals by two to one, this ratio does not necessarily apply to particular types of litigants in either the "criminal" or "negligence" categories. Thus, defendants in negligence cases seeking reversal of judgments against them succeeded in only 3 out of 17 instances, while claimants seeking reversal succeeded in 17 out of 37 instances. Similarly, defendants appealing in criminal cases won reversal in 6 of 13 appeals.

Table II also indicates that claimants in negligence cases involving automobiles fared slightly better on appeal than claimants in other negligence cases.

DISPOSITION OF LOWER COURT DECISIONS

In this first statistical survey the affirmance-reversal record of lower court judges carries little significance. A hasty perusal of Table III will reveal that relatively few decisions of each judge reached the supreme court during the Survey year. It is certainly not fair, therefore, to predicate an appraisal of any judge's success in conducting trials without reversible error upon these scanty statistics. Hopefully, however, cumulative totals in future years will be more meaningful.

Nonetheless, the very fact that not more than eight decisions of any one judge reached the supreme court during the Survey year is of some importance, if only to indicate that the vast bulk of cases do not reach the appellate level. Of particular interest is the fact that

4. See Honigman, Appellate Practice—1965, 43 Mich. St. B.J. 11 (Nov. 1964) and Stockmeyer, Michigan's New Court of Appeals: An Introduction, 43 Mich. St. B.J. 49 (Aug. 1964).

TABLE II
DISPOSITION OF CRIMINAL CASES AND NEGLIGENCE CASES

	Affirmances for government	Reversals for defendant	Other	Total
Criminal Cases				
General	6	6		12
Habeas Corpus	1		5[1]	6
Other			1[2]	1
Totals	7	6	6	19

	Affirmances for claimant	Affirmances for defendant	Reversals for claimant	Reversals for defendant	Other	Total
Negligence Cases[3]						
Involving Motor Vehicles	6	10	9			25
Other	8	10	8	3	4[4]	33
Totals	14	20	17	3	4	58

[1] These cases are treated as original writs rather than appeals. In three cases the writ was granted, in two cases it was denied.

[2] In People v. Holnagel, 371 Mich. 347, 123 N.W.2d 726 (1963) the supreme court affirmed the denial of a petition praying that petitioner be declared a criminal sexual psychopathic person.

[3] Included in this category are all actions based on a negligence theory. However, appeals raising only jurisdictional questions or questions involving only the liability of an insurance company on its indemnity policy were omitted. See, e.g., Jakubowski v. Goebel Brewing Co., 371 Mich. 383, 124 N.W.2d 241 (1963) and Auto Owners Ins. Co. v. Zeller, 370 Mich. 496, 122 N.W.2d 728 (1963). Specifically included are cases based on the "Dramshop Act" and malpractice cases. Cases involving collisions between automobiles and trains were treated as cases involving motor vehicles. However, one case involving an injury to a passenger already on board a bus was treated in the "other" category. See Getz v. City of Detroit, 372 Mich. 98, 125 N.W.2d 275 (1963).

[4] One decision was vacated and remanded for compliance with the court rules. Owens v. City of Detroit, 371 Mich. 569, 124 N.W.2d 873 (1963). In Otto Taylor Constr. Co. v. Saginaw Circuit Judge, 372 Mich. 376, 126 N.W.2d 701 (1964) a writ of mandamus to vacate an order for discovery was denied. Winchester v. Meads, 372 Mich. 593, 127 N.W.2d 337 (1964) resulted in a partial new trial as to damages only. Lastly, in Peasley v. Lapeer Circuit Judge, 373 Mich. 222, 128 N.W.2d 515 (1964) the court refused to permit a separation of the issues of liability and damages for separate trials.

TABLE III
DISPOSITION OF LOWER COURT DECISIONS[1]
(By Individual Judge)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Remanded	Appeal dismissed	Total
Adams, C. J. 6th Circuit Oakland	1	1					2
Anderson, D., Jr. 36th Circuit Cass Van Buren	2						2
Andrews, M. S. 15th Circuit Branch St. Joseph	1	1					2
Baker, J. W. 7th Circuit Genesee	3						3
Baldwin, G. S. 11th Circuit Alger Chippewa Luce Schoolcraft	1						1
Baum, V. J. 3rd Circuit Wayne	3	1					4
Beer, W. J. 6th Circuit Oakland		4	1				5
Beers, H. L. 14th Circuit Muskegon	2						2
Bohn, T. R. 3rd Circuit Wayne	1	1					2

[1] Fifteen cases handed down during the Survey period were excluded because they did not involve direct review of the decision of a lower court judge. One case, Harrison v. Ford Motor Co., 370 Mich. 683, 122 N.W.2d 680 (1963) is reported twice because it treats two appeals, one from Judge Baum and one from Judge Montante, which were consolidated in the supreme court.

Among the decisions excluded were five petitions for writ of habeas corpus, three appeals from the workmen's compensation appeal board, one petition for mandamus to the Pharmacy Board, two appeals from en banc decisions of the 7th Circuit, one letter to the Legislature, one appeal from the corporation tax appeal board and the reapportionment decisions.

[2] Only the home circuits and counties of the judges are listed. These are not necessarily the circuits in which the cases were heard.

TABLE III (*Continued*)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Remanded	Appeal dismissed	Total
Bowles, G. E. 3rd Circuit Wayne	6						6
Borchard, F. J. 10th Circuit Saginaw	4						4
Breakey, J. R., Jr. 22nd Circuit Washtenaw	2	2					4
Brennan, L. J. 12th Circuit Baraga Houghton Keweenaw	2						2
Brown, E. W. 41st Circuit Dickinson Iron Menominee	2	1					3
Canham, J. N. 3rd Circuit Wayne	1					1	2
Carland, M. 35th Circuit Livingston Shiawassee	1						1
Carroll, H. R. 16th Circuit Macomb	3						3
Cash, P. 29th Circuit Clinton Gratiot		2					2
Coash, L. E. 30th Circuit Ingham	1	2					3
Culehan, M. N. 3rd Circuit Wayne	1	2[3]					3

[3] In Ordon v. Sarko, 371 Mich. 689, 124 N.W.2d 876 (1963) four justices who originally had opposed reversal changed their votes when an application for rehearing was brought before them.

TABLE III (*Continued*)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Re-manded	Appeal dismissed	Total
Dalton, J. C. 4th Circuit Jackson	2		1[7]				3
Deneweth, G. R., Jr. 16th Circuit Macomb	2[4]	1					3
Dondero, S. G. 6th Circuit Oakland	5	3					8
Fenlon, E. H. 33rd Circuit Cheboygan Emmet Mackinac	2	2[5]					4
Fitzgerald, N. 3rd Circuit Wayne	4						4
Fox, R. W. 9th Circuit Kalamazoo	3	1					4
Gillis, J. A. Detroit Recorder's Court	1						1
Gilmore, H. W. 3rd Circuit Wayne	3	3		1			7
Glennie, P. J. 26th Circuit Alpena Montmorency Presque Isle	1[6]	1					2
Hoffius, S. 17th Circuit Kent	1	1					2

[4] In Millett v. Millett, 372 Mich. 259, 125 N.W.2d 856 (1964) a decree denying divorce was affirmed but the appeal relating to costs was dismissed as not appealable of right. The decision in McCarty v. Mercury Metal Co., 372 Mich. 567, 127 N.W.2d 340 (1964) was affirmed in part and remanded for supplemental opinion.

[5] Callihan v. Talowski, 372 Mich. 1, 124 N.W.2d 788 (1963) was in form a remand but in substance a reversal.

[6] The supreme court refused to affirm or disaffirm part of the decree for "want of clarity of facts." Petoskey Chamber of Commerce v. City of Petoskey, 372 Mich. 483, 127 N.W.2d 363 (1964).

[7] New trial on the question of damages only. Winchester v. Meads, 372 Mich. 593, 127 N.W.2d 337 (1964).

TABLE III (*Continued*)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Remanded	Appeal dismissed	Total
Holbrook, D. E. 21st Circuit Clare Isabella Midland	1		1				2
Holland, H. R. 6th Circuit Oakland	2	3		1			6
Huff, E. S. 10th Circuit Saginaw	3						3
Hughes, S. S. 30th Circuit Ingham	1						1
Kane, E. T. 31st Circuit St. Clair	3	2					5
Kaufman, N. J. 3rd Circuit Wayne	2	1					3
Koscinski, A. J. Detroit Recorder's Court		1					1
McCree, W. H. 3rd Circuit Wayne		1					1
McGregor, L. D. 7th Circuit Genesee	2	2					4
Miller, A. C. 23rd Circuit Alcona Iosco Oscoda	1		1				2
Montante, J. 3rd Circuit Wayne	1	1					2
Moynihan, J. A., Jr. 3rd Circuit Wayne	2						2
Murphy, T. J. 3rd Circuit Wayne	3	2					5

TABLE III (*Continued*)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Re-manded	Appeal dismissed	Total
Noe, A. H. 16th Circuit Macomb	3	2					5
O'Neill, J. E. 10th Circuit Saginaw	3						3
Parker, D. D. 7th Circuit Genesee	4	1					5
Piggins, E. S. 3rd Circuit Wayne	4						4
Peterson, W. R. 28th Circuit Benzle Kalkaska Missaukee Wexford	3	1					4
Quinn, T. C. 40th Circuit Lapeer Tuscola	2	2					4
Ricca, J. A. Detroit Recorder's Court	2						2
Roth, S. J. 7th Circuit Genesee	1	2					3
Rushton, C. C. 25th Circuit Delta Marquette	1	3					4
Salmon, M. J. 30th Circuit Ingham	2	1					3
Searl, F. N. 17th Circuit Kent	1	1					2
Smith, R. G. 18th Circuit Bay	3	1					4

TABLE III (*Continued*)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Remanded	Appeal dismissed	Total
Smith, R. L. 20th Circuit Allegan Ottawa	2						2
Spier, J. E. 16th Circuit Macomb	1	2					3
Stephens, R. B. 19th Circuit Lake Manistee Mason Osceola	2	1					3
Streeter, H. I. 31st Circuit St. Clair	2						2
Sullivan, J. A. 3rd Circuit Wayne	1	2			1		4
Sweet, L. F. 9th Circuit Kalamazoo	2						2
Vander Ploeg, C. Superior Court of Grand Rapids	2						2
VanderWal, J. H. 17th Circuit Kent	1		1				2
VanDomelen, H. 27th Circuit Mecosta Newaygo Oceana	1	2					3
Weideman, C. M. 3rd Circuit Wayne	1	2					3
Weipert, W. J., Jr. 38th Circuit Monroe		1					1
Wise, J. M. 3rd Circuit Wayne	4	2					6
Wright, R. R. 32nd Circuit Gogebic Ontonagon	2						2

TABLE III (*Continued*)

Judge and Court[2]	Affirmed	Reversed	Aff'd in part and rev'd in part	Modified	Remanded	Appeal dismissed	Total
Zick, K. F. 2nd Circuit Berrien	4	1[8]					5
Ziem, F. C. 6th Circuit Oakland		1					1

[8] In form a modification but in substance a reversal. Cooke v. Taube, 372 Mich. 132, 125 N.W.2d 278 (1963).

only four direct appeals from the Recorder's Court of the City of Detroit are reported. That court handles a sizeable volume of criminal cases; in 1962 alone 1,029 felonies and 7,354 misdemeanors were disposed of by trial.[5] That only four cases from Recorder's Court received plenary review during the Survey year is a startling revelation which merits further inquiry.

Hopefully, the existence of the new court of appeals, rules permitting appeals of right in criminal cases[6] and recent decisions requiring the appointment of counsel and the furnishing of transcripts in criminal cases[7] will result in a substantial increase in the percentage of criminal cases which become subject to appellate scrutiny.

OPINIONS OF THE JUSTICES

Part A.—Of 229 reported decisions (including one letter to the Legislature) 167, or 73 per cent, were unanimous with only one written opinion; 23, or 10 per cent, were unanimous with more than one written opinion; and 30, or 13 per cent, contained dissenting opinions (five with more than one). Only 9, or 4 per cent, of the decisions were affirmed by equal division. The breakdown of opinions in these last decisions is not reported, although of course they all contained at least one opinion for affirmance and one supporting a different disposition.

Part B.—This table is a breakdown of the opinions written by the individual justices. Justice Adams participated in only 42 decisions because he was seated late in the Survey period; Chief Justice Carr

5. See Supreme Court of Michigan, Office of the Court Administrator, Annual Report and Judicial Statistics for 1962, Table IV, p. 86 (1963).

6. See note 4, supra.

7. See Gideon v. Wainwright, 372 U.S. 335 (1963); Lane v. Brown, 372 U.S. 477 (1963); Draper v. Washington, 372 U.S. 487 (1963) and Douglas v. California, 372 U.S. 353 (1963).

TABLE IV
OPINIONS OF THE JUSTICES
Part A

Total Reported Decisions	229[1]	
Unanimous one opinion decisions[2] (including per curiams).	167	(includes 11 per curiams)
Unanimous Decisions (more than one opinion)	23	
Decisions with Dissents (total)	30	
With one dissenting opinion	25	
With more than one dissenting opinion	5	
Decisions by equal division	9	

[1] In re Apportionment of Legislature, 372 Mich. 418-482, 126 N.W.2d 731, 127 N.W.2d 862, 128 N.W.2d 350 (1964) was here treated as two decisions.

[2] Includes decisions in which one or more of the justices "concurred in result." This is not true, however, of the category "Unanimous Opinions" in Part B of this table, infra.

participated in only 134 decisions because he retired from the bench during the period. Justice Kavanagh replaced Carr as chief justice.

It is apparent that of the justices who participated throughout the Survey period Black and Souris wrote the most opinions. Together they accounted for more than one-third of all the opinions written, including more than one-half of the dissenting opinions. Justice Souris, with 19 unanimous opinions and 11 controlling majority opinions, seemed to have the greatest success in convincing his colleagues to support his views, at least in terms of numbers of cases.

Part C.—The total number of occasions in which each justice has "concurred in result" is reported separately because it represents a somewhat disturbing situation to those who seek to understand the court's decisions. When a justice concurs in result only, but does not bother to explain why he does not also concur in the opinions of other justices who favor the same result, he leaves several possibilities open. Perhaps he disagrees with the reasoning of the other justices, believing it to be faulty. If so, he would seem to have an obligation, possibly constitutional in nature,[8] to set forth the correct reasoning as he sees it. If his objection is to the scope or breadth of the decision or of some dictum in the opinion, his reasons might become very useful in restricting or broadening the effect of his brethren's opinions in future cases. Certainly the benefit of his different reasoning might prove helpful to other appellate courts considering a similar problem, or possibly to a reconstituted Michigan Supreme Court reconsidering the same problem at some future date.

Perhaps he is too busy with other opinions to waste his time

8. Cf. Mich. Const. art. VI, § 6 (1963).

TABLE IV
OPINIONS OF THE JUSTICES
Part B

	Number of decisions participated in	OPINIONS WRITTEN						
		Unanimous opinions[1]	Controlling majority opinions[2]	Concurring opinions not joined by majority		Dissenting opinions[5]		Total opinions
				Full opinions[3]	Signed memos[4]	Full opinions	Signed memos	
Adams, Paul L.	42	6	3	2	1	0	0	12
Black, Eugene F.	222	16	10	16	1	14	0	57
Carr, Leland W.	134	11	5	6	1	2	0	25
Dethmers, John R.	225	16	6	8[6]	0	4[7]	1	35
Kavanagh, Thomas M.	229	13	2	2	0	2	1	20
Kelly, Harry F.	227	15	7	7	0	4	0	33
O'Hara, Michael D.	214	14	2	10	0	6	0	32
Smith, Otis M.	225	17	11	6	2	2	0	38
Souris, Theodore	224	19	11	11	1	14	0	56
TOTALS		127	57	68	6	48	2	308

[1] Refers to opinions in which all the justices participating in the case joined. Excluded are opinions which would be unanimous but for the fact that one or more justices merely "concurred in result."

[2] Refers to opinions in which more than half of the justices then sitting joined. Included are the opinions, mentioned above in note 1, which would be unanimous but for the fact that one or more justices "concurred in result."

[3] Refers to concurring opinions in which not more than one-half of the justices then sitting joined. Such opinions are included in this category whether they are controlling or not. For example, when the court divides four to four the decision below will be affirmed. If four of the justices have joined in one opinion for affirmance it will be reported in this category rather than as a "controlling majority opinion." (In fact, of course, such a decision should not have precedential effect in future cases.)

"Full opinions" are those which contain more than one short paragraph.

[4] Same as note 3, above, except that the opinion consists of only one short paragraph. The opinion may or may not contain citations.

[5] Where a decision is affirmed by equal division, opinions calling for reversal or disposition other than affirmance are included as dissenting opinions. The difference between "full opinions" and "signed memos" is the same as that set forth above in notes 3 and 4.

[6] Included here is Justice Dethmers' opinion in Potter v. Potter, *372* Mich. *637*, *127* N.W.2d *320* (1964) in which he resubmitted Chief Justice Carr's earlier opinion for consideration by the court.

[7] Included here is Justice Dethmers' dissent in People v. Lyall, *372* Mich. *607*, *127* N.W.2d *345* (1964), in which he adopted Chief Justice Carr's earlier opinion in full.

TABLE IV
OPINIONS OF THE JUSTICES
Part C

	Concurrences in result[1]
Adams	0
Black	17[2]
Carr	5
Dethmers	8
Kavanagh	13
Kelly	5
O'Hara	1
Smith	9
Souris	0

[1] Includes all cases in which a justice has concurred only in result and has not written an opinion setting forth the reasoning in support of his concurrence nor explained why he has not joined in another justice's opinion in support of the result.

[2] Includes one case, People v. Walker, 371 Mich. 599, 124 N.W.2d 761 (1963), in which a conviction was affirmed by an equally divided court and in which Justice Black "concurred in result" with an opinion joined by the three other justices voting for reversal. In practical effect, therefore, Justice Black's concurrence in result should be deemed a "concurrence in dissent."

reporting a minor disagreement. Perhaps he agrees with the reasoning of his colleagues but dislikes the language they used to express it. Or he thinks the opinion may be an unpopular one and does not wish to be recorded as joining it. Perhaps he has not had an opportunity to examine the briefs and records carefully or to research the problem, but concurs in result simply because he feels, instinctively, that the outcome is correct. No one, of course, is entitled to draw any of these conclusions from a concurrence in result, and there is no intention to do so here. The point is, however, that anyone is entitled to conclude that a justice had *some* reason for not joining his colleague's opinion. Such a concurrence provides no guidance and, unfortunately, casts a shadow on the authoritativeness of the signed opinion while leaving open a question about the motives of the concurring justice. A written opinion, even a brief one, setting forth a justice's reasons for concurring separately would eliminate these difficulties.

Hopefully, the existence of an intermediate court of appeals which can finally dispose of unimportant appeals will provide the opportunity for the elimination of the "concurrence in result" practice in the supreme court.

Part D.—This part reports the alignment of the justices, one with the other.[9] Of the justices who participated throughout the entire

9. Compare Table III, Action of Individual Justices, The Supreme Court, 1963 Term, 78 Harv. L. Rev. 182 (1964). Each United States Supreme Court Justice wrote an

TABLE IV
OPINIONS OF THE JUSTICES
Part D

		Agreement and disagreement[1]							
		Souris	Smith	O'Hara	Kelly	Kavanagh	Dethmers	Carr	Black
Adams	O	34	35	34	32	35	33		30
	SC		1		1	1	1		1
	SD								
	AR	4	4	7	6	4	5		4
	AD								
	TO	34	36	34	33	36	34		31
	TA	38	40	41	39	40	39		35
	N	39	40	41	41	41	41		37
Black	O	157	155	149	151	160	149	86	
	SC	12	6	1	1	12	1		
	SD	10	4	1	2	11	2		
	AR	24	36	31	39	29	39	26	
	AD	5				4			
	TO	179	165	151	154	183	152	86	
	TA	208	201	182	193	216	191	112	
	N	216	217	206	220	221	218	132	
Carr	O	96	106	92	107	93	103		
	SC		1	10	13		14		
	SD		1	2	7	1	7		
	AR	15	12	8	6	23	6		
	AD			1					
	TO	96	108	104	127	94	124		
	TA	111	120	113	133	117	130		
	N	133	133	120	134	134	131		
Dethmers	O	161	168	161	174	160			
	SC		2	16	20				
	SD			6	14				
	AR	25	27	16	15	34			
	AD			1					
	TO	161	170	183	208	160			
	TA	186	197	200	223	194			
	N	220	221	210	224	225			
Kavanagh	O	178	173	161	163				
	SC	11	6	2	1				
	SD	10	7						
	AR	16	27	25	33				
	AD	2							
	TO	199	186	163	164				
	TA	217	213	188	197				
	N	223	224	213	227				
Kelly	O	164	174	168					
	SC	1	2	17					
	SD			4					
	AR	24	24	12					
	AD			2					
	TO	165	176	189					
	TA	189	200	203					
	N	222	223	212					
	O	159	169						

TABLE IV (*Continued*)

		Agreement and disagreement[1]							
		Souris	Smith	O'Hara	Kelly	Kavanagh	Dethmers	Carr	Black
O'Hara	SC	1	3						
	SD	1	1						
	AR	22	21						
	AD								
	TO	161	173						
	TA	183	194						
	N	208	209						
	O	176							
Smith	SC	7							
	SD	6							
	AR	18							
	AD	1							
	TO	189							
	TA	208							
	N	221							

[1] This table represents the alignment of the justices with one another. The key to the symbols is as follows:

O—represents the number of times the justices joined in the same majority opinion.

SC—represents the number of times the justices joined in the same concurring opinion, i.e., in an opinion which agreed with the result of the decision but which was not joined in by a majority of the justices then sitting.

SD—represents the number of times the justices joined in the same dissenting opinion.

AR—represents the number of times the justices agreed with the result of the decision but did not join in the same opinion. Among the situations in this category are those in which the two justices both "concurred in result."

AD—represents the number of times the justices agreed in dissent but did not join the same dissenting opinion.

TO—represents the total number of times the justices joined in the same opinion, i.e., the total of O, SC and SD.

TA—represents the total number of times the justices agreed with each other as to the desired result, whether or not they joined in the same opinion, i.e., the total of O, SC, SD, AR and AD.

N—The total number of decisions in which the justices participated. Except for one case this figure indicates the number of opportunities for agreement. In Wilson v. Saginaw Circuit Judge, 370 Mich. 404, 122 N.W.2d 57 (1963) Justice Souris wrote the court's opinion which was joined in by Dethmers, Kelly, Black, Kavanagh and Smith. In addition, Justice Black wrote another opinion which was also joined in by a majority of the justices, including Carr, Kavanagh, Souris and Smith. Thus, for the justices who participated, this one case created two opportunities to join in a majority opinion.

Other possible distortions are presented by the following: In Ordon v. Sarko, 371 Mich. 689, 124 N.W.2d 896 (1963) the justices were equally divided in the original decision. On application for rehearing, however, four justices originally voting for dismissal decided to join the other four for reversal. The justices who joined the same opinion are reported under "SC"; the justices who did not join the same opinion are reported under "AR". In Brown v. Forrester Constr. Co., 372 Mich. 204, 125 N.W.2d 315 (1963) Justices Black, Kavanagh and Souris are reported as joined in the same dissenting opinion but their dissent was only as to costs. In re Districting for Court of Appeals, 372 Mich. 227, 125 N.W.2d 719 (1964) is reported as a majority opinion in which all the justices then sitting concurred, even though it was not a "case" in the usual sense. Mr. Justice Carr did not participate. Lastly, for the purposes of this part of Table IV the reapportionment decision, In re Apportionment of Legislature, 372 Mich. 418-482, 126 N.W.2d 731, 127 N.W.2d 862, 128 N.W.2d 350 (1964), is treated as only one decision in which the alignment of the justices is reported only with respect to the final result, the adoption of the "Hanna" plan, and not with respect to their views on delaying decision.

survey period, Dethmers and Kelly joined with each other in the greatest number of opinions (208 out of 224) and also agreed most frequently as to the desired result (223 out of 224).

If the justices are often unwilling to join with all the others in the same opinion, they do not usually disagree about the desired result. In this regard the greatest number of disagreements was registered between Justices Dethmers and Souris, and they only disagreed in 34 of 220 cases (15 per cent).

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average of about 31 opinions during the 1963 Term; each Michigan Supreme Court Justice who participated throughout the entire Survey year wrote an average of about 37 opinions.